

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE APPLE iPhone 4 PRODUCTS
LIABILITY LITIGATION

Case No. 5:10-md-02188-RMW (PSG)

CLASS ACTION

This Document Relates to:

ALL ACTIONS.

**STIPULATED
PROTECTIVE ORDER REGARDING
MEDIATION**

The Honorable Ronald M. Whyte

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for entering the following Stipulated Protective Order Regarding the Disclosure and Use of Discovery Materials produced in connection with mediation (“Stipulated Protective Order”).

1 1. **PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in connection with mediation in this action are likely to
3 involve production of confidential, proprietary, or private information for which special protection
4 from public disclosure and from use for any purpose other than mediation of this litigation would
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order.

7 The parties acknowledge that this Stipulated Protective Order governs discovery and the
8 use of information in connection with the mediation of *In Re Apple iPhone 4 Products Liability*
9 *Litigation*, Case No. 5:10-md-02188-RMW.

10 2. **DEFINITIONS**

11 (a) Action: means the above-captioned consolidated action, presently
12 pending in the United States District Court for the Northern District of California.

13 (b) Party: Any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and outside counsel (and their support staff).

15 (c) Protected Material: All items or information, regardless of the medium or
16 the manner in which it is generated, stored or maintained (including, among other things,
17 testimony, transcripts, or tangible things), that is produced or generated in disclosures or
18 responses to discovery in connection with the mediation in this matter. All Protected Material
19 shall be marked "HIGHLY CONFIDENTIAL MEDIATION MATERIAL – ATTORNEYS
20 EYES ONLY."

21 (d) Receiving Party: A Party that receives Protected Material provided,
22 produced or made available for inspection by a Producing Party.

23 (e) Producing Party: A Party that provides, produces or makes available for
24 inspection Protected Material in the course of this Action.

25 (f) Outside Counsel: Attorneys who are not employees of a Party but who are
26 retained to represent or advise a Party in this action.

27 (g) In-House Counsel: Attorneys who are employees of a Party.
28

1 (h) Counsel (without qualifier): Outside Counsel and In-House Counsel (as
2 well as their support staffs).

3 (i) Expert: A person with specialized knowledge or experience in a matter
4 pertinent to the Action who has been retained by a Party or its Counsel to serve as an expert
5 witness or as a consultant in this Action.

6 3. SCOPE

7 This Stipulated Protective Order shall govern all Protected Material, in whatever form,
8 provided, produced, or made available for inspection in connection with the mediation conducted
9 in this Action. The protections conferred by this Stipulated Protective Order cover not only
10 Protected Material (as defined above) but also any information copied or extracted therefrom, as
11 well as all copies, excerpts, summaries or compilations thereof.

12 Nothing herein shall be construed to prevent a Producing Party from reviewing, using or
13 disclosing its own Protected Material in any manner that it deems appropriate.

14 4. DURATION

15 Even after the termination of this Action, the confidentiality obligations imposed by this
16 Stipulation and Protective Order shall remain in effect until a Producing Party agrees otherwise in
17 writing or a Court order otherwise directs.

18 5. CONTRACTUAL OBLIGATIONS TO NON-PARTIES

19 In connection with the mediation of this Action, a Party may be requested to produce
20 information that is subject to contractual or other obligations of confidentiality owed to a non-
21 party. The Party subject to the contractual or other obligation of confidentiality shall promptly
22 contact the person to whom the obligation is owed to determine whether that person is willing to
23 permit disclosure of the confidential information under the terms of this Stipulated Protective
24 Order. If that person is so willing, the information shall be produced in accordance with this
25 Stipulated Protective Order. If the person to whom the obligation is owed is not willing to permit
26 disclosure of the confidential information under the terms of this Stipulated Protective Order, or
27 fails to respond before responses or production is due, the Party seeking the information in this
28 Action shall be so notified and given a description of the documents withheld, the reason for

1 withholding the documents, the person to whom the obligation of confidentiality is owed and the
2 person's contact information. This description shall be produced as promptly as practicable.

3 6. USE OF PROTECTED MATERIAL

4 The Parties may use Protected Material that is disclosed or produced by another Party in
5 connection with mediation in this Action only for purposes of the mediation. A Receiving Party
6 may not use Protected Material for any other purpose, including, without limitation, any other
7 litigation or any business or competitive function. Such Protected Material may be disclosed only
8 to the categories of persons and under the conditions described in this Stipulated Protective Order
9 and may not be disclosed to Experts or to the media. For purposes of this Stipulated Protective
10 Order, and specifically as utilized in the preceding sentence, "disclosed" or "disclose" shall mean
11 any physical or electronic showing of the Protected Materials to any person, including
12 communication in any form of the contents (in whole or in part) or existence of the Protected
13 Materials. When this Action has been terminated, a Receiving Party must comply with the
14 provisions of Paragraph 8 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and in
16 a secure manner ensuring that access is limited to the persons authorized under this Stipulated
17 Protective Order.

18 7. DISCLOSURE OF PROTECTED MATERIAL

19 Unless otherwise ordered by the Court or permitted in writing by the Producing Party, a
20 Receiving Party may disclose Protected Material only to:

- 21 (a) the Receiving Party's Outside Counsel of record in this action, as well as
- 22 employees of said Outside Counsel to whom it is reasonably necessary to disclose the information
- 23 for this Action;
- 24 (b) In-House Counsel of the Receiving Party to whom disclosure is reasonably
- 25 necessary for this Action; and
- 26 (c) any mediators and their personnel.
- 27
- 28

1 The Party's Counsel who discloses Protected Material shall be responsible for assuring
2 compliance with the terms of this Stipulated Protective Order with respect to persons to whom
3 such Protected Material is disclosed.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
5 OTHER LITIGATION

6 If a Receiving Party is served with a subpoena or an order issued in other litigation that
7 would compel disclosure of any Protected Material, the Receiving Party must so notify the
8 Producing Party in writing (by fax or email, if possible) immediately and in no event more than
9 three court days after receiving the subpoena or order. Such notification must include a copy of
10 the subpoena or court order.

11 The Receiving Party must also immediately inform in writing the party who caused the
12 subpoena or order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is the subject of this Stipulated Protective Order. In addition, the Receiving
14 Party must deliver a copy of this Stipulated Protective Order promptly to the party in the other
15 action that caused the subpoena or order to issue.

16 The purpose of imposing these duties is to alert the interested parties to the existence of this
17 Stipulated Protective Order and to afford the Producing Party in this case an opportunity to try to
18 protect its confidentiality interests in the court from which the subpoena or order issued. The
19 Producing Party shall bear the burden and expense of seeking protection in that court of its
20 Protected Material. Nothing in these provisions should be construed as authorizing or encouraging
21 a Party in this action to disobey a lawful directive from another court.

22 9. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party, within 90 days after
24 the conclusion of mediation of this action, each Receiving Party must, at the Producing Party's
25 option, destroy all Protected Material or return it to the Producing Party. As used in this
26 paragraph, "all Protected Material" includes all copies, abstracts, compilations, summaries or any
27 other form of reproducing or capturing any of the Protected Material. Whether the Protected
28 Material is returned or destroyed upon request by the Producing Party, the Receiving Party must


1 submit a written certification to the Producing Party by the 90-day deadline that identifies (by
2 category, where appropriate) all Protected Material that was returned or destroyed and affirms that
3 the Receiving Party has not retained any copies, abstracts, compilations, summaries, or other forms
4 of reproducing or capturing any of the Protected Material.

5 STIPULATED AND AGREED TO BY:

6
7 DATED: June 15, 2011

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~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

CASE NO. 5:10-md-02188-RMW

DCACTIVE-15394896.1

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2
3 DATED: June 15, 2011

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16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 DATED: June 17, 2011

Paul S. Grewal
~~HONORABLE RONALD M. WHITE~~
~~United States District Judge~~

PAUL S. GREWAL
United States Magistrate Judge